

**Agenda Item No:** 9.5 **Report No:** 51/15  
**Report Title:** A Combined Approach to Mitigating the Impact of Development Within 7km of the Ashdown Forest  
**Report To:** Cabinet **Date:** 19<sup>th</sup> March 2015  
**Cabinet Member:** Cllr Tom Jones – Lead Member for Strategy and Development  
**Ward(s) Affected:** Newick and small parts of Barcombe & Hamsey and Chailey & Wivelsfield  
**Report By:** Nazeya Hussain, Director of Business Strategy and Development

**Contact Officer-**

**Name:** Tal Kleiman  
**Post Title:** Planning Policy Officer/ Neighbourhood Planning Officer  
**E-mail:** [tal.kleiman@lewes.gov.uk](mailto:tal.kleiman@lewes.gov.uk)  
**Tel No:** 01273 484417 or Ext 6282

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**Purpose of Report:**

To update members about the position regarding the mitigation of development within the 7km zone around the Ashdown Forest and to seek delegated authority to allow officers to agree a combined approach with neighbouring authorities to help enable development to come forward in this area

**Officers Recommendation(s):**

- 1 To authorise the Director of Business Strategy and Development, in liaison with the Lead Member for Strategy and Development, to consider on behalf the Council whether to agree to the Ashdown Forest Strategic Access Monitoring and Management Strategy that is being prepared jointly by Wealden District Council (the lead authority), Lewes District Council, Mid Sussex District Council and Tunbridge Wells Borough Council.
  - 2 To note the position with regards to development within the 7km zone.
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**Reasons for Recommendations**

- 1 To ensure that Lewes District Council complies with The Conservation of Habitats and Species Regulations (Amendment) 2012 (Habitat Regulations) which transpose the requirements of EC Directive 79/409/EEC on the Conservation of Wild Birds (the Birds Directive) and EC Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora (the Habitats Directive).

- 2 To help enable development within the 7km zone around the Ashdown Forest

## **Background**

- 1.1 The Ashdown Forest, located in Wealden District, is designated as a Special Area of Conservation and Special Protection Area and as such is protected under the European Union's Habitats and Birds Directives, and related national regulations, because it has species and habitats of European importance. Habitat Regulations Assessment undertaken by Wealden District Council has shown that new development built within 7km of the Ashdown Forest may cause detrimental effects on the ground nesting birds of the Forest, from ensuing recreational disturbance. Parts of Lewes District fall within this 7km zone.
- 1.2 Our obligations under the Habitat Regulations include ensuring that development proposals in our District do not adversely affect the ecological integrity of any European designated site. Where an adverse effect is identified, the Habitats Directive promotes the use of mitigation measures and avoidance of any potentially damaging effects to the site. In July 2012 a report was taken to Cabinet (see link in the background papers), stating that a Planning Inspector had accepted evidence from Wealden District Council that development within 7km of the Ashdown Forest is likely to increase recreational use at the Forest, which in turn is likely to have a significant impact on the ground nesting birds that reside in the Forest. As a result, mitigation is needed before development can be allowed in the area. As the 7km zone extends into Lewes District, this is currently impacting upon development at locations, particularly in Newick, where development is being resisted until acceptable mitigation measures can be identified.
- 1.3 Since that report, Officers have been working with counterparts in neighbouring authorities, as well as with Natural England and the Conservators of Ashdown Forest, to better understand the issue and responsibilities on local authorities and to work towards a comprehensive and combined solution.
- 1.4 The aforementioned Cabinet Report of July 2012 identified that Suitable Alternative Natural Greenspaces (SANGS) are needed to attract new residents away from the Forest, thus reducing the impact of recreational disturbance from visitors on the protected birds. It is planned that a SANG will be allocated in Local Plan Part 2 and Officers have been identifying and assessing sites for their suitability to form a SANG. Developers could then contribute to its purchase, establishment and management as part of mitigation arrangements for their development. After subsequent discussions with Natural England, the Council may also consider other mitigation in lieu of SANGS, put forward by developers of sites, on a case-by-case basis if it is shown that it would reduce visitor numbers to the Forest.
- 1.5 With further understanding since the initial Cabinet Report, it is clear that SANGS can only be part of the solution in complying with the Regulations. There is also a need to better manage visitors to the Forest and monitor the impact of recreational disturbance on the protected birds. To that end, all the

impacted upon authorities have been working towards the implementation of an Ashdown Forest Strategic Access Management and Monitoring Strategy (SAMMS).

- 1.6 Core Strategy policy CP10 reflects the information in paragraphs 1.4 and 1.5 and requires developers to contribute to the delivery of both the SAMMS and SANGS in order for development to be approved. If they fail to do so, the Council would have little choice but to resist development. This approach was recently tested at the Core Strategy Examination Hearings and through a number of upheld planning appeals in other authorities<sup>1</sup>.

### **Strategic Access Management and Monitoring Strategy (SAMMS)**

- 2.1 Officers have been working with counterparts at Wealden District, Mid Sussex District and Tunbridge Wells Borough Councils, in partnership with the Conservators of Ashdown Forest to develop the SAMMS for Ashdown Forest. The SAMMS will set out the measures that will help reduce the impact of visitors on the protected birds. Measures are likely to include dog training, extra wardens, distribution of leaflets, increased signage as well as bird monitoring, among other things.
- 2.2 The SAMMS will cost out such measures, allowing the authorities to set a tariff which would be payable by developers on a per dwelling basis, to contribute to the implementation of such schemes and thereby meet their obligations under the Habitats Regulations. The likely cost per dwelling (currently estimated to be around £1,800) is not expected to impact upon development viability within the part of the 7km zone within Lewes District. The viability evidence collected to inform the Core Strategy and Community Infrastructure Levy Charging Schedule has identified this to be the case.
- 2.3 In order to work out the cost of SAMMS per dwelling, authorities have been working with each other and the Conservators of Ashdown Forest to calculate the costs of delivering the measures that form part of the SAMMS. In order to work out the cost to a developer of delivering the SAMMS, authorities have given indicative numbers of housing building rates, on a yearly basis, that are expected to come forward. Should such numbers not come forward as expected by each respective Council, the relevant Council would have to provide funding to meet any shortfall. However, should houses be delivered earlier than expected, the additional funding would be used to offset any reduction in anticipated funding in subsequent years. This will minimise any potential financial risk to the Council.
- 2.4 SAMMS are required to be up and running before development in the 7km zone can be occupied – i.e. it is not the case that development can be allowed in the 7km zone to build up a fund for SAMMS, for it to be provided at a later date. In order to build up this fund therefore, Wealden District Council is to provide advanced funding<sup>2</sup>. Such advanced funding will benefit all authorities, including

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<sup>1</sup> For example see APP/C1435/A/13/2203389

<sup>2</sup> See Wealden District Council Cabinet Report of 22<sup>nd</sup> October 2014

<http://council.wealden.gov.uk/documents/s41928/Ashdown%20Forest%20Protection%20Zone%20Update%20on%20Recreation%20Mitigation%20and%20Monitoring%20Measures.pdf>

LDC by allowing SAMMS to be in place before funds can be collected from developers to pay for SAMMS.

- 2.5 It is anticipated that the SAMMS will shortly be finalised and presented to the respective authorities for agreement. As there is a desire within all authorities to allow development to come forward in the 7km zone, we would want to agree to the SAMMS in a timely manner as possible.
- 2.6 As a result delegated authority is sought in order to agree to the finalised SAMMS. Making agreement by delegated authority would allow the flexibility to make such a decision quickly but still allow for proper consideration to be given by the Director of Business Strategy and Development in consultation with the Lead Member for Strategy and Development. Making a timely decision will be of benefit to both us and partner authorities.

### **Financial Appraisal**

- 3 The following comments were received from Finance:

1 By agreeing the Ashdown Forest Strategic Access Monitoring and Management Strategy, the Council will commit to a tariff payable by developers on developments within part of the District area. The tariff amount (per dwelling) will be set at a level which covers both the cost of measures to be taken by the conservators of Ashdown Forest and the cost which the Council will incur in administering the scheme locally. As noted in para 2.2 the level of the tariff is not expected to impact upon development viability.

2 Tariffs collected by the Council from developers will be passed to Wealden District Council, as lead authority. A schedule of payments to Wealden DC will be agreed based on indicative house building rates. Officers anticipate that these rates will be readily achieved but there is a risk that this is not the case and, consequently, the Council would be required to fund the shortfall from its own resources. For example, if LDC had indicated that 15 homes were to come forward in a year and only 12 were actually built (20% less than anticipated), the liability to the Council arising in such a year would be approximately £5,400. The Council will seek to negate such a risk by taking a precautionary approach to the indicative house building rates.

### **Legal Implications**

- 4 The legislation governing the protection of European designated conservation sites is contained within The Conservation of Habitats and Species Regulations 2010 as amended (Habitat Regulations) which transpose the requirements of EC Directive 79/409/EEC on the Conservation of Wild Birds (the Birds Directive) and EC Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora (the Habitats Directive).

Mitigation arrangements that are consistent with the Habitat Regulations must be agreed before the Council can permit development that might otherwise, in combination with other plans and projects have an adverse effect on the ecological integrity of a European designated site. If they are not then the

Council runs the risk of failing in its statutory duty as responsible authority under the Habitat Regulations.

It is considered by authors of this report that the combined Authority response to the SAMMS aspect of the mitigation of development within 7km of the Ashdown Forest provides a robust approach to fulfilling the Council's duty under the Habitat Regulations. This approach will be kept under review in light of developing case law and guidance

### **Sustainability Implications**

5 I have completed the Sustainability Implications Questionnaire and found the following significant effects which I propose to mitigate/enhance in the following ways:

- The preservation of important habitats (Ashdown Forest)
- A positive impact on ground nesting birds

Officers will seek to ensure that the SAMMS maximises the positive impact on the effects described above, when considering whether to agree the strategy, if delegated authority is given. The consideration will be made in light of the Council's obligations under the Habitats Regulations.

### **Risk Management Implications**

6 I have completed a risk assessment.

The following risk will arise if the recommendations are not implemented and I propose to mitigate the risk in the following way:

Risk	Mitigation
That delegated authority is not given, meaning that the Council cannot agree to the SAMMS strategy with neighbouring authorities, impacting upon on our collective ability to facilitate development in the 7km zone in a timely manner.	To agree to the recommendation in the report, to give delegated authority to the Director of Business Strategy and Development to agree to the SAMMS strategy.

No new risks will arise if the recommendations are implemented.

### **Equality Screening**

7 An Equality Screening has been undertaken. It is considered that the proposal has no impact on equality and therefore a full Equality Analysis is not required.

### **Background Papers**

Report to Cabinet 12<sup>th</sup> July 2012, Agenda item 9.2 -

<http://lewes.cmis.uk.com/cmis5/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/387/Committee/149/Default.aspx>

Lewes District Joint Core Strategy (Submission version) -

<http://lewes.cmis.uk.com/cmis5/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/387/Committee/149/Default.aspx>

## **Appendices**

**8**